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GOVERNOR



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SECRETARY

COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
MINE SAFETY REVIEW COMMISSION

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COMMISSIONERS
DENISE MOORE DAVIDSON,
CHAIR
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STAN CAVE

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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF FEBRUARY 14, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSCR" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, Commissioner William D. Donan and Commissioner Stan Cave were present. Also in attendance was the MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 p.m. EST
- ❑ **Declaration of a Quorum:** Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office of Legal Services was present representing the Office of Mine Safety and Licensing. General Counsel DNR Mike Haines, his assistant Kari Sutherland, and staff attorneys for OLS were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **01/10/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

Motions - various;

- A motion was made by OMSL attorney Hon. Smock for the approval of a settlement in **06-MSRC-017 Gary Wayne Bentley**. Hon. Smallwood was not present nor was his client, Bentley because they appeared at the last meeting. Hon. Oppgaard attended and participated as an intervener. The Commission determined that the **Settlement Agreement** as tendered was an acceptable resolution and **approved**. Commissioner Cave so moved, which was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- A motion for partial **dismissal** was made by OMSL attorney Hon. Patrick in **07-MSRC-188 Roger Banks** et al. Hon. Rajkovich represented the Respondents and opposed the dismissal. After consideration of the authority of MSRC the Commission determined that the motion should be **denied**. Commissioner Cave so moved, which was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- A motion to **set aside the default** in **07-MSRC-187 Dickie Lee Cantrell** was made by the Respondent who filed an answer concurrently with the motion for default filed by OMSL. The Hon. Patrick represented OMSL who also made a motion to continue. The Commission **granted** both motions, the default was set aside, the Answer of Cantrell entered and the matter was continued to accommodate witness scheduling. Commissioner Cave so moved, which was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- The Commission next considered a motion in **06-MSRC-114 Timothy V. Hardy**, made by Hardy to **re-open**. Hardy appeared but offered no new evidence or other circumstance that would allow the Commission to set aside its previous ruling. The motion was **denied**. Commissioner Donan so moved, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered by the Chair, Commissioner Davidson.
- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
- 06-MSRC-110 was called in regard to **Michael J. Dunigan** upon OMSL's motion to permanently revoke his certifications for failure to comply with the Settlement Agreement. OMSL was represented by Hon. Hoskins. OMSL presented proof by Affidavit that he failed to submit drug tests required by the settlement agreement adopted as a final order of MSRC. He appeared

and was unable to demonstrate compliance with that term of the Settlement Agreement. Commissioner Donan made a motion to **grant** the motion to **permanently revoke**, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

- The Commission next called the procedurally similar cases of 06-MSRC-119 **Larry J. Robinson**, 07-MSRC-151 **Bryon Keith Bowles**; 06-MSRC-108 **Donald G. Combs** which were notified of sanctions for failure to submit required drug tests. No one appeared for any Respondent. OMSL was represented by Hon. Hoskins and she moved to permanently revoke each of their certificates. Commissioner Donan made a motion to **grant** the motions to **permanently revoke**, which were seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered upon the signature of Davidson.
- Upon the call of 07-MSRC-154 **Michael Anderson** wherein OMSL alleged a failure to submit required drug tests, the parties moved to **continue** to allow for further discovery. OMSL was represented by Hon. Hoskins. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
 - The Commission discussed the procedurally similar KRS 351.120(12) appeals of 07-MSRC-150 **Brian Joe Morris**, 07-MSRC-243 **Jared Stanley**, 07-MSRC-246 **Robert Hurley** and counsel: Hon Webster, 08-MSRC-037 **Earl Adkins**, 08-MSRC-038 Randolph **Hardin**. They either appeared or called and moved for **continuances** to Thursday **March 13**, 2008 so that they may perfect their appeals. 08-MSRC-034 **Christopher Middleton** was **continued** to Friday **April 18** for the same reason. Commissioner Donan so moved as to each. These were seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.
 - The Commission called the case of 07-MSRC-246 **Robert Hurley**, who allegedly refused a drug test. He was represented by counsel, Hon. Webster. OMSL called one witness, the human resources manager of Hurley’s former employer who did not witness the event but whose investigation he termed “inconclusive”. Hurley testified that he quit and neither prior to nor subsequent to quitting was he asked to submit to a drug test. OMSL had no other witnesses due to illness, and thus OMSL having the burden of proof; MSRC sustained the appeal and reinstated the certificates subject to

a prior Settlement Agreement in force with Hurley. Commissioner Donan made a motion to **sustain** the appeal which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 07-MSRC-210 Jacob K. **Taylor**, 07-MSRC-244 Thomas E. **Riley**; 08-MSRC-001 Hank **Craft** 08-MSRC-002 David **Tackett**; 08-MSRC-005 Jeremie W. **McFall**; 08-MSRC-028 Emanuel **Collins** and 08-MSRC-035 Emmanuel J. **Salley** in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson recused herself from the discussion and determinations on McFall and Salley and Cave recused himself on Tackett citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders except for the recusals which were signed by Commissioner Donan.
- The Commission heard the KRS 351.120(12) Petition for Appeal of 08-MSRC-003 **Robert A Baker**. He appeared and presented evidence to show that his suspension was in error because he had valid prescriptions for the relevant time period for the reported drug. He therefore moved to have his certificates reinstated. Commissioner Donan made the motion to **Sustain the appeal and restore the certificates** which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- The Commission called also the KRS 351.120(12) Petition for Appeal of 07-MSRC-182 Michael **Beverly**, 07-MSRC-225 Jeremy Wade **Crain**, 07-MSRC-228 Larry D. **Bard**, 08-MSRC-036 David B. **Kingrea**, 08-MSRC-046 Sherrell **Sandlin** who were all duly notified and scheduled for the hearing *they* requested for this meeting. They did **not appear** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made each motion for Show Cause which were seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called the case of 07-MSRC-230 **Jeffery S. Pratt**. He failed to appear despite notice at the last meeting and failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

- Petitioner **Brian Scott Clemmons** in 08-MSRC-004 moved to withdraw his appeal, because he was **reinstated by OMSL** prior to the hearing. This was not opposed by OMSL and he did not appear. Commissioner Donan moved for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered by the Chair, Davidson.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and none appeared despite notice by certified mail with a return as to each; 08-MSRC-006 Robert **Combs**, 08-MSRC-007 Gary **Adkins**, 08-MSRC-008 Tony **Smith**, Jr., 08-MSRC-011 David M. **Lester**, 08-MSRC-012 Charles **Speer**, 08-MSRC-014 Gregory T. **Francis**, 08-MSRC-016 Tommy L. **Cook**, 08-MSRC-017 Danny Jason **Bentley**, 08-MSRC-018 Larry Dean **Williams**, 08-MSRC-021 Nicholas William **Smith**, 08-MSRC-022 Jamie Alexander **Tackett**, 08-MSRC-025 Michael Joseph **Smith**, 08-MSRC-026 James L. **Noble**, 08-MSRC-027 Zarchary W. **Collier**, 08-MSRC-029 Donnie M. **Mosley**, 08-MSRC-031 Mark Anthony **Preece**, 08-MSRC-040 Damon D. **Day**, 08-MSRC-041 Jonathan L. **Fields**, 08-MSRC-042 Christopher P. **May**, 08-MSRC-044 Joseph M. **Muncy**, and 08-MSRC-045 Shannon W. **Chaffin**. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission also ruled favorably on the proposed **settlements** tendered in the following OMSL Show Cause hearings for revocation: 08-MSRC-009 Darin K. **Adams**, with OMSL represented by Hon. Hoskins 08-MSRC-019 Danny H. **Asher**, Jr. with OMSL represented by Hon. Pete Thompson and 08-MSRC-039 Marvious L. **Sturdivant**, and 08-MSRC-043 Greg **Potter** with OMSL represented by Hon. Geisler. Commissioner Davidson recused as to Adams citing a conflict and did not vote. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders except for the recusals which were signed by Commissioner Donan.
- The Commission granted **continuances** in the following: 08-MSRC-010 Cory J. **Leason**, with OMSL represented by Hon. Hoskins 08-MSRC-013 Robert Jacob **Mullins** and 08-MSRC-015 Charles W. **Vitaoe**, Jr., 08-MSRC-020 Dustin Allen **Easley**, with OMSL represented by Hon. Pete Thompson, 08-

MSRC-023 Jason A. **Worley**, with OMSL represented by Hon. Wood, 08-MSRC-030 Timothy L **Sammons**, 08-MSRC-032 Jason B. **Pauley** with OMSL represented by Hon. Steve Thompson, all of which were continued to March 13, 2008.

- The Commission issued a **Show Cause** Order for 08-MSRC-024 Walter R. **Young** to appear at the March meeting and participate. OMSL was represented by Hon. Wood.

The 11:00 a.m. Docket for “initial denial” pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:

None were set for this meeting.

The 11:00 a.m. Docket for Motions to Reconsider:

Counsel Hon. Roper in 06-MSRC-042 **Ralf Hurley** moved for a **continuance** due to the development of previously undiscovered evidence. OMSL did not oppose the motion to allow time for its review. Commissioner Donan made a motion to **grant** the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

06-MSRC-115 was called in regard to the motion to reconsider filed by **Joshua R. Joseph**. He was permanently revoked for failing a drug test he agreed to take in the Settlement Agreement he entered. He **did not appear** upon this his second filing of this motion. He did not submit any new evidence or other proof whatsoever. After consideration MSRC determined that his motion to reconsider should be **denied** with prejudice. Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.

07-MSRC-021 Stephen **Maggard** was placed on the docket at his request for possible reconsideration of a MSRC revocation from a suspension that he did not appeal. He did not appear, and he failed to file any pleading in this regard and did not file any additional documentary or other proof prior to the meeting to substantiate his statement that he had a life threatening illness requiring hospitalization, among other reasons, to support his claim that he could not timely appeal his suspension. After consideration MSRC determined that his motion to reconsider should be **denied** but may be set upon an appropriate filing by Maggard. Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.

The 1:00 p.m. Docket for “traditional” type cases:

The Commission called the case of 07-MSRC-100 **Hendrickson Equipment Inc.**, & James Hylton which was **heard**. OMSL was represented by Hon. Haines and the Respondents by Hon. Bobby Williams.

Upon the call of 07-MSRC-167 **Blue Diamond Coal, Inc.** and 05-MSRC-010 Darrell Banks, Onis R. Smith & Conley Horn, OMSL counsel Hon. Haines informed the Commission that Respondents in each case, both represented by Hon. Noelle True, had indicated that settlement was pending. Upon that, the Commission determined that the cases should be **continued** to the **June 12**, meeting to allow time for settlement. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.

Petitions for an Order filed by OMSL in roof control cases:

None were filed or this meeting.

Old Business

❑ **Ratification of Final Order:**

07-MSRC-088 **Jerry J. Maggard** was signed by Commissioners Donan and Davidson, with Cave recusing because he did not sit for the case.

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on **Thursday March 13**, and the likelihood of several traditional type hearings.

❑ **Status Report & Abeyances;**

None were scheduled for this meeting.

❑ **Appeals**

- ❑ The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a briefing schedule. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. Hon. Haines, counsel for OMSL stated briefing was underway.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a briefing schedule.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The General Counsel Certified the record and sent the file to the Court.

New Business

❑ Office & Administrative;

- ❑ The General Counsel advised that the **mileage** remains to forty three (43) cents per mile.

❑ Training

- **Required Hearing Officer Training:** Wednesday June 25 2008. Initial training – Hon. Stan Cave only- March 28 ½ day. The required KYOAG annual training hearing officer for all MSRC Commissioners and the General counsel has been scheduled for **June 25, 2008**.

- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the above referenced hearing 07-MSRC-100 Hendrickson Equipment and the Probable Cause Determinations and then reconvened to issue orders below as appropriate.

❑ Probable Cause Determinations

The following two cases were discussed and then the Commission determined that Probable Cause was appropriate: 08-MSRC-033 Bobby Lloyd **Short** & Bradley D. **Gossett** and for 08-MSRC-047 Greg **Davenport**. Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.

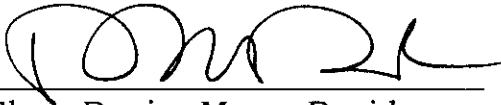
❑ Settlement Agreements

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

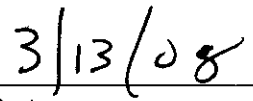
- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday March 13, 2008.**
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on the second Thursday of the month with this next meeting on Thursday March 13, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Denise Moore Davidson
Mine Safety Review Commission



Date